IN THE

STATE OF MAINE

SUPREME JUDICIAL COURT

205 Newbury Street, Room 139

Portland, Maine 04101

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Clerk's Office Maine Supreme Judicial Court

DOCKET NO. OJ-15-2IN THE
STATE OF MAINE

SUPREME JUDICIAL COURT

205 Newbury Street, Room 139

Portland, Maine 04101

DOCKET NO. OJ-15-2

Brief

In the Matter of

Request For Opinion of the Justices

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INTRODUCTION

Comes now, Lise McLain, Dorothy Lafortune as well as Phillip Merletti, Jack McCarthy and Robert Roy as contributors to this brief and they adopt this brief as well as exhibit(s) as a whole, the people as mentioned in Article 1, Section 2 of the Constitution of the State of Maine, as interested parties regarding the public interest and accepting the invitation of the Supreme Judicial Court, file this brief pertaining to the July 17, 2015 request for opinion of the justices filed by Governor Paul R. LePage as it relates to the dispute regarding whether the 65 legislative bills are laws or not, a denial of his constitutional duties according to law and violations of the Constitution of the State of Maine as well as a statutory law as mandated by the said constitution known as Title 3, MRS, Section 2 by the Legislature.

Please hold this brief with less stringent standards since all parties of interest are not attorneys-at-law nor counsellors-at-law. In the "procedural order" dated July 20, 2015 docket number OJ-15-2 from the said court regarding Governor Paul R. LePage's brief as it relates to the said bills it states in part: "Any person or entity wishing to submit a brief to the Court shall do so by filing a brief......" so, therefore, we are accepting the invitation of the Chief Justice and submitting this brief to the said court as interested parties regarding the public interest.

STATEMENT OF THE CASE

On July 17, 2015 Governor Paul R. LePage submitted a request for an opinion of the justices of the Supreme Judicial Court pertaining to whether the said bills are laws or not. He states in part: "Please accept my request for an Opinion of the Justices of the Maine Supreme Judicial Court pursuant to Article VI, Section 3 of the Maine Constitution. I seek your advice upon important questions of law regarding my constitutional obligation to faithfully execute the laws, specifically, 65 bills vetoed by on July 16, 2015, 17 of which are emergency legislation." First of all, the word "solemn" according to dictionary.com states in part: "characterized by dignified or serious formality, as proceedings; of a formal or ceremonious character" which is a solemn occasion. Article VI, Section 3 of the 2013 Constitution of the State of Maine (thereinafter known as constitution) states: "The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." Governor LePage's request for an opinion of the justices does, indeed, rise to the level of establishing a "solemn occasion" as prescribed in the said constitution as it raises serious constitutional violations of the Legislature and criminal behavior of the said Legislators.

Furthermore, the constitution mentions the word "adjournment" twice in Article IV. Part Third, Section 2. It does not say "recess" or "adjourn."

In the 1843 Bouvier's Law Dictionary the definition of adjournment states in part: "is the dismissal by some court, legislative assembly, or properly authorized officer, of the business before them, either finally, which is called an adjournment sine die, without day; or, to meet again at another time which is appointed and ascertained, which is called a temporary adjournment." This definition clearly shows that there are two different ways of adjourning.

Additionally, in Article IV, Part Third, Section 1 of the constitution it states in part: "The Legislature shall enact appropriate statutory limits on the length of the first regular session and of the second regular session. The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled."

This statutory law is Title 3, Legislature, Chapter 1: Organization of the Legislature, Subchapter 1: General Provisions, Section 2 (thereinafter known as Title 3, Section 2) – Salary, expenses and travel of Members of the Legislature and representatives of Indian Tribes which states in part relevant to this issue raised by Governor LePage: "The first regular session of the Legislature, after its convening, shall adjourn no later than the 3rd Wednesday in June and the 2nd regular session of

the Legislature shall adjourn no later than the 3rd Wednesday in April. The Legislature, in case of emergency, may by a vote of 2/3 of the members of each House present and voting, extend the date for adjournment for the first and 2nd regular session by no more than 5 legislative days, and in case of further emergency, may by a vote of 2/3 of the members of each House present and voting, further extend the date for adjournment by 5 additional legislative days. The times for adjournment for the first and 2nd regular sessions may also be extended for one additional legislative day for the purpose of considering possible objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2."

This statute, as passed by the Legislature itself, is a result of a constitutional mandate as mentioned in Article IV, Part Third, Section 1.

The first regular session of the 127th Legislature began in December 2014 and by Title 3, Section 2 that particular first session by law must be adjourned no later than the 3rd Wednesday in June which would be June 17,2015. In the case of an emergency the Legislature can extend 5 legislature days with 2/3 of the members present and voting on this extension. Governor LePage's counsel has stated in her question of law document that there were 17 emergency bills in the first legislative session so, therefore, there was, indeed, an emergency situation. On June 17th the Legislature did not extend the 5 legislative days as prescribed by statutory law

which, in turn, is mandated by constitutional law even though an order, S.P. 549. dated June 17th shows an extension of 5 legislative days. This cannot be lawful since the vote occurred on June 18th by both houses and not June 17th. This order, S.P. 549, shows deception and a lie which is a violation of the said constitution as well as Title 3, Section 2, and every member present and voting on June 18by both houses is subject to impeachment since they had no delegation of authority to vote pertaining to any extension of 5 legislative days on the said date. No doubt, this is criminal behavior. The actual adjournment took place on June 17th since that was the 3rd Wednesday of June with no extension requested and voted on as written in Title 3. Section 2. Since the lawful adjournment took place on June 17th, the legislators could not lawfully proceed further after June 17th regarding the first regular legislative session. In actuality, the first legislative session was over and final on June 17th according to law. To do otherwise in this case is criminal behavior.

On June 18th the President Pro Tempore, who is Senator Thibodeau from Waldo County, stated that a "housekeeping" matter needed to be attended to "regarding extending beyond statutory adjournment." He requested a "roll call" and more than 1/5 of the members present were in favor of it and a roll call was ordered. All 35 senators present voted in the affirmative. On June 18th the House of Representatives also unlawfully voted to extend the 5 legislative days regarding

Title 3, Section 2 mandates. There were 118 yes; 23 no and 10 absent, and the required votes was 94.

This is a <u>blatant violation</u> and is a crime by all members of the Senate and the House of Representatives present on June 18th and voting as it relates to Article IV, Part Third, Section 1 of the said constitution as well as Title 3, Section 2 since the lawful adjournment took place on June 17th. Senator Thibodeau had no delegation of authority to request a "roll call" on June 18th, and all members present and voting had no delegation of authority to vote on extending the 5 legislative days as mentioned in Title 3, Section 2 which, in turn, is a constitutional mandate as above-mentioned. This calls for impeachment of all senators and representatives present and voting on June 18, 2015 pertaining to the extension of 5 legislative days which was unlawfulon its face. Any ordinary person who understands the English language and can read and possess comprehension reading skills can see for themselves what this title says and means as well as what the constitution mandates. This is outright fraud and treason against the people of Maine by members of both houses who were present and voting on June 18th. They all had a duty to speak up and not permit any violations of both the constitution and laws. No one questioned the unlawfulness of what happened on June 18th. Being ignorant of any laws is no excuse.

All constitutional officers are required to know what the said constitution says and means, and if those mentioned in Article VI, Section 3 are confused about something in the constitution, then they have a remedy which must meet a "solemn occasion."The solemn occasion concept was not put there for nothing in the said article. They are required to know the duties of their offices, and when there is a duty to speak up, then they are not allowed to remain silent and permit in their presence a violation of the constitution and other laws as they did on June 18th. No legislator questioned the unlawfulness of extending the 5 legislative days on June 18th, and that is a crime and they are subject to impeachment. Once again, not knowing the laws is no excuse. The June 17th date shows that the first legislative session was adjourned lawfully since there wasn't a lawful extension of legislative days as prescribed by Title 3, Section 2 of which this title and section is a constitutional mandate. There is an unlawful order dated June 23rd which states: "Ordered, the Senate concurring, that in accordance with emergency authority granted under the Maine Revised Statutes Annotated, Title 3, Section 2,the First Regular Session of the 127th Legislature shall be extended for five legislative days." This is again a blatant violation of the constitutional mandate as well as Title 3, Section 2 as above-noted. In other words, these constitutional officers have committed fraud and treason against the people of Maine by their actions and are subject to impeachment. They do not possess any delegation of authority to

proceed beyond June 17th. Title 3, Section 2 is very clear regarding adjourning on the third Wednesday of June unless there is a vote of 2/3 members of both houses present and voting which constitutes an emergency. The law says what it says and means what it means. It is also very clear according to Title 3, Section 2 and constitutional law as prescribed in Article IV, Part Third, Section 1 the limitations of the first and 2nd legislative sessions in terms of convening, adjourning and extending dates in case of an emergency and providing the Governor time for his objections, vetoes and so forth. The legislative regular sessions cannot go on forever. There must be a beginning and an ending according to law. All bills or resolution passed by the legislature beyond June 17th are null and void since there wasn't any delegation of authority to proceed any further in the first regular legislative session according to constitutional law as well as statutory law. In Article IV, Part Third, Section 2 it states: "Bills to be signed by the Governor; proceedings, in case the Governor disapproves; allowing the Governor 10 days to act on legislation. Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of adjournment which shall have passed both Houses., shall be presented to the Governor, and if the Governor approves, the Governor shall sign it; if not, the Governor shall return it with objections to the House in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such considerations, 2/3 of that House shall agree to pass it, it shall be sent together with the objections, to the other House, by which it shall be reconsidered, and, if approved by 2/3 of that House, it shall have the same effect as if it had been signed by the Governor; but in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both Houses respectively. If the bill or resolution shall not be returned by the Governor within 10 days (Sunday excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor has signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution; the bill or resolution shall not be a law."

This article and section is a very clear, fair, and balanced process of "give and receive" by the Legislature and the Governor in order to conduct business of the government and serve the people.

It is obvious that the legal adjournment of the legislature was conducted on June 17, 2015 with no way for the Governor to return any of the bills. This is a violation of constitutional law as well as statutory law as above-referenced. According to the

constitution, the Governor is provided with 10 days after adjournment to act on the legislation presented to him. As mentioned above, the Legislature extended 5 legislative days on June 18 unlawfully. They then met on June 19, 22, 23 and 24. In the Senate dated June 23, 2015 an order, S.P. 0550 states: "Ordered, the House concurring, that when the Senate and House adjourn, they do so until Tuesday, June 30, 2015 at 10:00 in the morning." This was voted on contrary to lawon June 24, 2015 by both houses since they were not allowed to be session to start with by the legal June 17th adjournment. This vote brought about another extension of 5 legislative days to June 30, 2015 without mentioning sine die (finality), and no date was established as to when they would return.

As a matter of fact, June 30, 2015 would have constituted the entire 11 days after June 17th excluding Sundays as prescribed in Title 3, Section 2 if the Legislature would have acted properly and lawfully according to law. They cannot convene beyond the allotted 11 days as described in Title 3, Section 2. Since they convened on July 16, 2015, then this shows blatant, criminal behaviors on the part of the legislators present and voting on that day and subject to impeachment. The 11th day is for the Governor's opportunity to raise objections, if any, and that would have been June 30, 2015 and not July 16, 2015.

Under Title 3, Section 2 it allows the legislature to extend a total of 11 legislative days. The 11th day can be established "for the purpose of considering possible

objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2. (See Title 3, Section 2)." Since the Legislature only illegally extended 10 legislative days even though the lawful adjournment occurred on June 17th, they once again violated Title 3. Section 2 by not extending a 11th day for the Governor to conduct his constitutional duties regarding those said bills since they ignored his returned bills when they returned in session contrary to law on July 16, 2015. This, in essence, eliminated illegally the clear, fair, and balanced mandates of Article IV, Part Third, Section 2 in which the "give andreceive" process of the Legislature and Governor would take place according to law. In other words, the Governor's hands has been tied contrary to law as he cannot "give back" to the Legislature any bills when they "are not home" meaning not in session (so-called adjournment on June 30th). The Governor has been denied by the Legislature to fulfill his constitutional obligations in this case. On July 16th when the legislature returned illegally into session since they were already adjourned on June 17th, they unlawfully ignored his returned bills on July 16th which would have been the 11th day which is supposed to be set aside for the Governorto state his objections, if any, as prescribed by Title 3, Section 2 and Article IV, Part Third, Section 2. This is once again a blatant violation by the Legislature of the laws of the State of Maine and a crime at that

regarding their constitutional duties. The Legislature did so-called adjourn sine die on July 16, 2015 (see exhibit number 2).

QUESTIONS OF LAW

- 1. Did the Legislature violate Title 3, MRS, Section 2 which, in turn, is a constitutional mandate as prescribed in Article IV, Part Third, Section 1?
- 2. Did the Legislature violate the Governor's constitutional duties by preventing him from returning the bills presented to him?

Additionally, see Phillip Merletti's exhibit number 1 which is attached to this brief as well as the order (exhibit 2) adjourning on July 16, 2015.

CONCLUSION

For the foregoing reasons, we request that the Justices of the Supreme Judicial Court take into consideration the facts, laws and questions of law as stated in this brief in support of Governor LePage's constitutional questions of law and his constitutional duties as Governor.

Respectfully submitted,

Lise McLain

Mothy Lafortune

Enclosures:

Phillip Merletti – Exhibit 1

Adjournment order, S. O. 24 and 25 dated July 16, 2015 – Exhibit 2

CERTIFICATE OF SERVICE

I, Lise McLain, hereby certify that on July 24, 2015 I caused one copy of this brief dated July 23, 2015 in the Matter of Request For Opinion of the Justices to be mailed by regular first class U.S. Mail, postage pre-paid to:

State of Maine Office of the Governor c/o Governor Paul R. LePage 1 State House Station Augusta, Maine 04333-0001

Chilit 1

TAKE AMERICA BACK

(TAB) Spokesperson Phil Merletti 738-4861

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07/21/15

OPINION & SUMARY OF LETTER TO DAWN HILL & THOMAS SAVIELLO, DATED JULY 10, 2015

Before the reader begins, it is imperative to understand that the opinions of this author are based on facts and a literal reading of the U.S. and Maine Constitutions. It is also necessary to know that this author adheres to the strict interpretation of the language and words as indicative of the original intent of the founders of the original Constitutions. To do otherwise is a direct violation of both Constitutions, which are the supreme laws of the U.S. and of Maine. Therefore, all servants of the people of Maine who are elected, appointed, or hired and take the Oath written in Article IX, Section 1 of Maine's Constitution are bound and obligated before the eyes of GOD and the Maine People to fulfill their responsibility and to be accountable to the same.

First, this is the fourth time in less than a year that we have written proof that the Attorney General Jennet Mills has tried to misrepresent, misconstrue, misdirect and mislead the Supreme Court, the Legislature, the Maine People and the news media concerning her political and personal opinion of the Maine Constitution and the State Statutes. As Attorney General, Janet Mills is obligated to oversee all the attorneys in Maine – and she is subject to the responsibility and accountability as the prime protector of the people's Constitutional laws. If this is the case, is she simply incompetent? Or is she using her legal skills to further her political beliefs by knowingly misrepresenting, misconstruing, and misleading the public on extremely important issues to make Governor LePage look like a clumsy, bungling, unknowledgeable fool?

As a researcher on Constitutional issues, I have found that even though the Governor may not be a Constitutional scholar, I would put his dedication to the people, his business and practical knowledge, and his honesty and trustworthiness up against Janet Mills any day.

The letter in question, from Attorney General Janet Mills, dated July 10 2015, is apparently in response to a request from Democrat Senator Dawn Hill and Republican Senator Thomas Saviello as to why the Governor did not veto certain bills according to Article IV, Section 2 of the Maine Constitution.

Mills starts off by muddying the waters and distracting recipients from the easily read language, plain direction, and clear intent of the Maine Constitution – i.e., by using the phrase "adjourned sine die". She makes the statement that: "The legislature has not adjourned sine die, and more than ten days have elapsed since certain bills were

presented." Attorney General Mills does not explain the full intent of the Constitutional language which gives the Governor discretion to wait until the legislature is called back by the President of the Senate and Speaker of the House. Was this a willful act, or just incompetency?

The fact is, the phrase *sine die* is not found in the Maine Constitution. Instead, it uses the simple, easily understood word "<u>adjournment</u>". "Adjournment" specifies no duration and can mean for one day, one week, one month or an indefinite time. The Constitution does not say temporary, *sine die*, recess. It says, simply, adjournment.

Based on the Maine Constitution's Article IV, Part 3, Section 2, the proper path for leadership is to reduce to writing how they wish to take a short break or vacate the first half of a session. Past acceptable precedent is by vote of the Senate and House to legally break for a period of time and, by procedure, return at the call of the President of the Senate and the Speaker of House. The process to adjourn is done by preparing a legal document that explains what is to take place, and it must contain proper language and dates if needed. The legal <u>adjournment</u> did take place by joint order, Tuesday, June 30, 2013. Senate Paper 556 was presented and voted unanimously by both houses and recorded in the journal (see below)

STATE OF MAINE ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE

FIRST REGULAR SESSION SENATE ADVANCED JOURNAL AND CALENDAR

Tuesday, June 30, 2015

SUPPLEMENT NO. 31

ORDERS

Joint Order

(4-1) On motion by Senator MASON of Androscoggin, the following Joint Order:

S.P. 556

Ordered, the House concurring, that when the House and Senate <u>adjourn</u> they do so <u>until the call</u> of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor.

Please note that this is a Senate Paper (with the House concurring). It is a Joint Order, which specifies that the House and Senate will adjourn until the call of the President of the Senate and the Speaker of the House. The order does not say "recess or temporary adjournment" or "adjournment sine die." Please also note: There is no target date for their return, and the Joint Order leaves the door open (e.g., to when there is a need to

conduct business, or consider possible objections of the Governor). To all intents and purposes, the Legislature was adjourned on July 30, 2015, and they were/are adjourned until whenever they are called back by the Senate and House leaders.

Mills claims that the Joint Order was a day-to-day adjournment and not a final adjournment. Mills is partially correct, but she fails to reveal that the legislative leaders planned to take several weeks (more than 10 days, not counting Sundays) before they would return. This fact is the keystone to Governor LePage's argument for not vetoing the bills that were dumped on his desk before the Legislature's needed rest and adjournment.

This was a 13 day adjournment, not counting two Sundays and coming back on the 14th day. The Joint Order began on the 30th of June and the proposed return date was the 16th of July. If you do the math, that is 15 days in total. If the Governor vetoed the bills, there was no mechanism to return them to the house in which they shall have originated (see section below).

This is very simple. The Legislature was absent (no longer in session) and there was no one to accept the vetoed bills! LePage was forced to do what he did – he had no other choice at that point than to engage the Constitution, which allows him to return the vetoed bills 3 days after the 16th of July if they had scheduled the return for more than 4 days for emergency or to return by the second half of the session.

Please see the portion of the Maine Constitution's Article IV, Part 3, Section 2 below and note the bolded areas.

The language in this bill is clearly written, so why should the Attorney General and Legislators who do not understand the Constitution cause this dispute, or is there a hidden agenda? When the bills were given to the Governor, which triggered the 10 day clock, did the President of the Senate and Speaker of the House not understand the problem that they created by adjourning for more than the 10 days that were needed for the Governor to use his veto power and return the bills to the house of origin? Was it an honest mistake, or did they know exactly what they were doing?

The vast majority of the Legislature has, without embarrassment, admitted that they have not yet read the Maine Constitution. Some have admitted that they've read certain parts, but none of them have studied the Constitutions. The Legislative Council has turned down several times our offer to review with the Legislature what the Maine Constitution says and means, and how it is interpreted and used (ditto with the U. S. Constitution). When asked if they felt that the taking of the Oath was just a ceremony, they were insulted. But they had no answer as to how they could support their Oath and the Constitution if they did not study it!

CONCLUSION

The Maine Constitution is easy to read, interpret, and follow – but there are those who wish to confuse the issues for political gain. This is the second time that the Attorney General has stepped up to apply her type of politics and cause the Governor to engage the Maine Constitution, Article VI, section 3, to seek an opinion on "important questions of law" and "upon solemn occasions". The Attorney General has obviously and willfully wasted time and taxpayer money. She has drawn the willing news media into a "feeding frenzy" and has given her political allies a phony issue for disrupting the normal flow of government.

The Governor had, and still does have, the ability to request an investigation for impeachment (last January) on these grounds: first, for incompetence and failure to allow her department to stand for the State – a clear violation of Title 5, Section 191, Subsection 3; second, for requesting the Supreme Court to violate the Maine Constitution, Article VI, Section 3; third, for asking the Court to ignore the Governor's important questions of law (first question); and fourth, for the "solemn occasion" on the second question. Her request also tried to mislead the Court on the Governor's second question which was clearly found by the Supreme Court to be a "solemn occasion" and finally addressed as such!

The Governor has engaged the Maine Constitution again to request the Maine Supreme Court to give their opinion on three questions of law, or a solemn occasion.

#1. What form of adjournment prevents the return of a bill to the legislature as contemplated by the use of the word, adjournment, in Article IV, pt 3, sec 2 of the Maine Constitution?

Answer: We have found that the Governors first question can be answered simply and thusly: Once a bill or resolve is received by the Governor and the Legislature is adjourned for more than 10 days (not counting Sundays), the Governor cannot return said bills with objections to the House in which it shall have originated.

#2. Did any of the actions or inactions by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?

<u>Answer:</u> When the Governor cannot return said bills and resolves with objections to the House in which it shall have originated, the three-day veto procedure is triggered for the Governor to follow the Constitutional process when the President of the Senate and Speaker of the House call the Legislature for more than 4 working days.

#3. Are the 65 bills I returned to the Legislature on July 16 properly before that body for reconsideration?

Answer: The answer is No. The Maine Legislature returned from their adjournment on the 16 of July, the Governor vetoed said bills and properly returned them before they quickly adjourned again. It is written that the first day of a four day return, the first day does not count. The governor has the next three days to act on said bills. Unfortunately, the Legislature quickly adjourned on the 17th of July. The Governor will have to return said bills with objections to the House in which it shall have originated on the 2nd, 3rd or 4th day when the President of the Senate and Speaker of the House calls the Legislature for more than 4 working days.

The Governor was somewhat forced to return said bills with objections to the House in which they had originated – and it is apparent that he gave up the option for the first free day. The Legislature could have allowed the 4 days to let the Governor follow the constitutional process, but they again adjourned until the President of the Senate and Speaker of the House calls the Legislature for more than 4 working days. When the Legislature is called back in January, the Governor may start the process again, at which time the Legislature has the right to override the Governor's veto if they can muster the 2/3 vote of each house.

Exhibit 2

STATE OF MAINE ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE FIRST REGULAR SESSION SENATE ADVANCED JOURNAL AND CALENDAR

Thursday, July 16, 2015

SUPPLEMENT NO. 10

ORDERS

On motion by S	Senator MASON	of Androscoggin,	the following	Senate	Order:
				SO	24

Ordered, that a message be sent to Governor Paul R. LePage informing him that the Senate has transacted all business before it and is ready to Adjourn Without Day.

On motion by Senator CUSHING of Penobscot, the following Senate Order: S.O. 25

Ordered, that a message be sent to the House of Representatives informing that Body that the Senate is ready to Adjourn Without Day.